



Advisory Opinion 10-012

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2009). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On March 10, 2010, the Information Policy Analysis Division (IPAD) received an email from Elden Elseth. In his email, Mr. Elseth asked the Commissioner to issue an advisory opinion regarding the Middle Snake Tamarac Rivers Watershed District Board (MSTRWDB) and the Open Meeting Law (OML), Minnesota Statutes, Chapter 13D. Mr. Elseth submitted the \$200.00 fee required by Minnesota Statutes, section 13.072.

IPAD, on behalf of the Commissioner, wrote to Douglas Sorenson, Chairman of the Board, in a letter dated March 16, 2010, to notify Mr. Sorenson of her intent to issue the opinion and to give the members of the Board an opportunity to explain their position. On April 5, 2010, IPAD received a response, dated same, from Gerald Von Korff, an attorney representing the Board. A summary of the facts follows.

In his opinion request, Mr. Elseth, a former member of the Board, wrote, “[o]n October 15th, 2007, the MSTRWD Board of Managers established a ‘litigation subcommittee’ to discuss litigation matters coming before the watershed district. Three of the seven members of the board were appointed to this committee or subcommittee.”

Mr. Elseth stated: “[a]ccording to the October 15, 2007 minutes . . . of the MSTRWD Board, the purpose of this subcommittee was ‘to address litigation or potential litigations in scheduled, closed sessions, with the District’s legal council [sic].”

According to Mr. Von Korff, “[t]he litigation committee was formed by the Managers upon our advice as a means of addressing attorney-client complications arising from the existence of three related litigations”

Mr. Von Korff stated that litigation committee meetings “were conducted in compliance with the open meeting law.”

Issue:

Based on Mr. Elseth’s request, the Commissioner agreed to address the following issue:

Is the litigation committee or subcommittee of the Middle Snake Tamarac Rivers Watershed District Board (MSTRWDB) subject to the requirements of Minnesota Statutes, Chapter 13D?

Discussion:

There is no dispute between the parties that the Middle Snake Tamarac Rivers Watershed District Board is subject to the Open Meeting Law. The issue before the Commissioner is whether the litigation committee is also subject to the OML.

According to Minnesota Statutes, section 13D.01, subdivision 1, the OML applies to:

All meetings, including executive sessions

...

(c) of any

(1) committee,

(2) subcommittee,

...

of a public body;

The Legislature did not define “meeting” in Chapter 13D; however, in *Moberg v. Independent School District No. 281*, 336 N.W.2d 510 (Minn. 1983), the Supreme Court wrote:

Meetings subject to the requirements of [Chapter 13D] are those gatherings of a quorum or more members of the governing body, or a quorum of a committee, subcommittee, board, department, or commission thereof, at which members discuss, decide, or receive information as a group on issues relating to the official business of that governing body.

Moberg at 518.

Thus, based on the above, meetings of the litigation committee of the Board are subject to the OML.

Opinion:

Based on the facts and information provided, the Commissioner’s opinion on the issue Mr. Elseth raised is as follows:

The litigation committee or subcommittee of the Middle Snake Tamarac Rivers Watershed District Board (MSTRWDB) is subject to the requirements of Minnesota Statutes, Chapter 13D.

Signed:

Sheila M. Reger

Sheila M. Reger
Commissioner

Dated:

April 23, 2010